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In re Application of :
ALLGEUER, Thomas, T., et al. :
PCT No.: PCT/US00/19320 : DECISION ON REQUEST
U.S. Application No.: 10/031,304 : UNDER 37 CFR 1.497(d)
International Filing Date: 17 July 2000 :
Priority Date: 16 July 1999 :
Attorney's Docket No.: ADVA:012 :
For: FRINGED SURFACE STRUCTURES :
OBTAINABLE IN A COMPRESSION MOLDING :
PROCESS :

This decision is issued in response to applicants' 18 November 2002 filing, which has been treated as a request under 37 CFR 1.497(d) to correct inventorship. Applicant has paid the required fee.

BACKGROUND

On 17 July 2000, applicant filed international application PCT/US00/19320 which designated the United States and claimed a priority date of 16 July 1999.

On 26 January 2001, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. As a result, the deadline for submission of the basic national fee was extended to expire thirty months from the international filing date, i.e., 16 January 2002.

On 15 January 2002, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 05 April 2002, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements indicating that an oath or declaration in compliance with 37 CFR 1.497 and the \$130 surcharge for filing the declaration after the thirty month deadline were required.

On 09 August 2002, applicant filed a response to the Notification Of Missing Requirements which included, among other materials, the required surcharge and an executed declaration.

On 18 October 2002, the DO/EO/US mailed a Notification Of Defective Response indicating that the declaration filed on 09 August 2002 was defective in that it was executed by an inventor (Werner Wagner) who was not listed as an inventor on the international application.

On 18 November 2002 applicants filed the materials treated herein as a petition under 37 CFR 1.497(d) to correct inventorship by adding Werner Wagner to the present application.

DISCUSSION

The petition to correct inventorship seeks to add Werner Wagner as an inventor herein. The petition asserts that this correction is appropriate because Mr. Wagner is a proper inventor here, and it states that the error in inventorship occurred without deceptive intent.

37 CFR 1.497(d) states:

(d) If the oath or declaration filed pursuant to 35 U.S.C. 371(c)(4) and this section names an inventive entity different from the inventive entity set forth in the international application, the oath or declaration must be accompanied by:

- (1) A statement from each person being added as an inventor and from each person being deleted as an inventor that any error in inventorship in the international application occurred without deceptive intention on his or her part;
- (2) The processing fee set forth in § 1.17(i); and
- (3) If an assignment has been executed by any of the original named inventors, the written consent of the assignees (see § 3.73(b) of this chapter).

Here, as noted above, the declaration filed on 09 August 2002 names an inventive entity different from that set forth in the international application. Specifically, it includes an inventor (Werner Wagner) who was not listed as inventor on the international application. Accordingly, before the declaration can be accepted, applicant must submit the materials set forth in 37 CFR 1.497(d).

A review of the materials filed by applicant on 18 November 2002 reveals that this submission satisfies all the requirements of 37 CFR 1.497(d). The submission includes the required statement from the added inventor Werner Wagner, satisfying item (1). Applicant has paid the processing fee required by item (2). And the “Statement Under 37 CFR 3.37 and Statement Of Assignee Under 37 CFR 1.397(d)(3),” with accompanying copies of the relevant

assignments, provides the written consent of the assignee Advanced Design Concepts GmbH, required by item (3).

Because applicants have satisfied all the requirements of 37 CFR 1.497(d), the request to correct inventorship so as to add Werner Wagner as an inventor herein is appropriately granted. Based on this corrected inventorship, the declaration filed on 09 August 2002 is no longer considered defective.

CONCLUSION

The request under 37 CFR 1.497(d) is **GRANTED**.

The inventorship herein is corrected by the addition of inventor Werner Wagner.

Based on the corrected inventorship, the declaration filed on 09 August 2002 is no longer considered defective.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accordance with this decision. The 35 U.S.C. 371 date is 09 August 2002.



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